

REMARKS

Claims 28-46 and 48-53 are pending in this application.

The Office Action rejects claims 28-33, 36, 37, 41-44 and 46 under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 3,071,281 to Sawai in view of U.S. Patent No. 5,868,273 to Daenen. The Office Action concedes that Sawai fails to disclose a bottom cap with a plurality of equidistantly spaced holes in an end wall, but contends that it would have been obvious to modify the Sawai bottom cap with holes 52 shown in Daenen for the purpose of "allow[ing] the seal to be fully bonded and supported by both sides of the cap to prevent the seal from becoming dislodged or moving." Applicant respectfully asserts that no such motivation exists to modify the bottom cap of Sawai.

Claims 28-33, 36, 37 and 41 have the feature of a bottom cap having a bottom wall with a plurality of holes disposed completely through the bottom wall. Claim 29 has the feature of the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap.

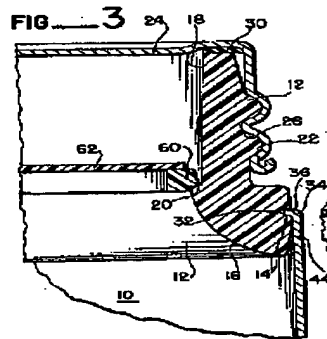
The objective of the Sawai cup is to provide a cup of "particularly economical construction." (Sawai col. 1, lines 52-53). To achieve this objective, Sawai utilizes a container body formed of tubing that may be purchased in long lengths. (Sawai col. 1, lines 52-53). The container is intended to be "most economically produced even in small quantities by the processor or packager of the goods." (Sawai col. 1, lines 30-34). To further achieve the objective of cost reduction, Sawai utilizes well-known and easily available pressure sealing fruit jar caps (Sawai col. 2, lines 29-38):

edge for uses to be explained later. The outside of rim 12 is preferably provided with external threads 22 which are adapted to accept the well developed pressure sealing members, one example of which is illustrated by cap 24. Caps of this order are normally supplied for fruit jars for home canning and the like and are provided with interior threads 26 adapted to coast with the external threads 22 thus providing a means for seating the sealing cap 24 with considerable pressure so that, if desirable, a ring gasket may be employed at 30.

To modify the Sawai cap as suggested by the Office Action so that the typical fruit jar cap requires its bottom wall to have a plurality of holes disposed completely through the bottom wall defeats the low-cost objective of Sawai. As such Sawai and Daenen do not render claims 28-33, 36, 37 and 41 obvious.

Moreover, the Office Action's suggested motivation for such a modification further requires that the simple ring gasket be transformed into a sealing member that is not only positioned through the plurality of holes (as in claim 29), but also beyond the plurality of holes to the opposite side of the bottom wall in order to create a stronger bond.

As shown in Figure 3, the Sawai sealing device is a simple ring gasket 30 positioned along the inner face of the typical fruit jar cap 24:

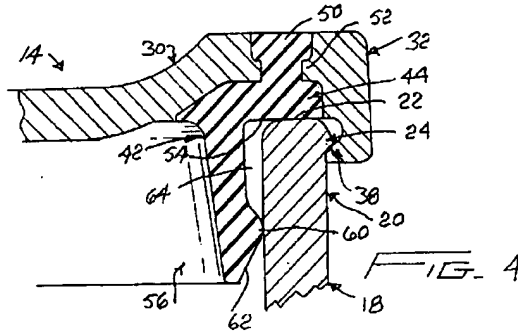


Modifying the Sawai cap as suggested by the Office Action so that not only would the typical fruit jar cap require its bottom wall to have a plurality of holes disposed completely through the bottom wall but would further require that the simple ring gasket be transformed into a sealing member that is positioned through the plurality of holes, would drive up the cost of the Sawai cup and would no longer achieve the intended Sawai objective to provide a cup of "particularly economical construction" that is "most economically produced even in small quantities by the processor or packager of the goods." Such a modification goes against the teaching of Sawai. As such Sawai and Daenen do not render claims 28-33, 36, 37 and 41 obvious.

Claims 42-44 and 46 have the feature of the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap and a portion of the sealing member extending below the bottom wall, wherein the container assembly rests on the sealing member when standing up.

As described above, there is no motivation to modify the Sawai cup with a plurality of holes in the bottom wall of the bottom cap, nor with a sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap.

Moreover, neither Sawai nor Daenen disclose or suggest the feature of claims 41-44 and 46 of a portion of the sealing member extending below the bottom wall, wherein the container assembly rests on the sealing member when standing up. As shown above, the Sawai cap is a top cap and as shown in Figure 4 of Daenen, not only is the cap a top cap but the sealant does not extend beyond the cap:



As such Sawai and Daenen do not render claims 42-44 and 46 obvious.

The Office Action rejects claims 34 and 35 under 35 U.S.C. § 103 as being obvious over Sawai in view of Daenen and further in view of U.S. Patent No. 5,312,013 to Bridges. Claims 34 and 35 depend from claim 28 and include the feature the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap. Bridges is relied upon by the Office Action for the disclosure of spaced inner and outer walls that provide for a contiguous connection of the container and bottom cap walls. Bridges does not disclose or suggest the features of claims 34 and 35 of the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap.

The Office Action rejects claims 38 and 39 under 35 U.S.C. § 103 as being obvious over Sawai in view of Daenen and further in view of U.S. Patent No. 4,828,126 to Vincinguerra. Claims 38 and 39 depend from claim 28 and include the feature of the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap. Vincinguerra is relied upon by the Office Action for the disclosure of a container rim having an inwardly directed flange. Vincinguerra does not disclose or

suggest the features of claims 38 and 39 of the sealing member being positioned through the plurality of holes in the bottom wall of the bottom cap.

The Office Action rejects claims 40, 45 and 47 under the judicially created doctrine of obviousness-type double patenting over claims 1 through 54 of U.S. Patent No. 6,719,159 (Chomik). This rejection is moot as to claim 47, which has been cancelled. Assignees, by and through their attorney of record, will file a terminal disclaimer pursuant to 37 C.F.R. 1.321 to overcome this rejection upon the allowance of these claims over the above art.

The Office Action rejects claims 40, 45 and 47 under the judicially created doctrine of obviousness-type double patenting over claims 1 through 23 of U.S. Patent No. 6,142,325 (Chomik). This rejection is moot as to claim 47, which has been cancelled. Assignees, by and through their attorney of record, will file a terminal disclaimer pursuant to 37 C.F.R. 1.321 to overcome this rejection upon the allowance of these claims over the above art.

Newly added claims 48-53 include the features of a bottom cap with an elastomeric member bonded to at least a portion of the top and bottom surfaces of the bottom wall of the bottom cap and the elastomeric member being positioned through the plurality of holes, with a portion of the elastomeric member extending below the bottom surface of the bottom wall, wherein the container assembly rests on the elastomeric member when standing up.

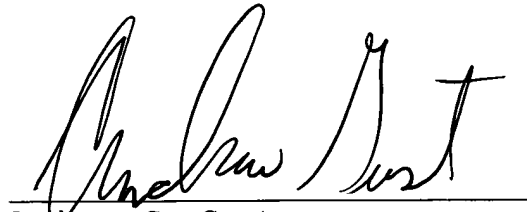
As described above, Sawai, Daenen, Bridges and Vincinguerra all fail to disclose or suggest the feature of a portion of the elastomeric member extending below the bottom surface of the bottom wall, wherein the container assembly rests on the

elastomeric member when standing up. Moreover, there is no motivation to modify the Sawai cup with a plurality of holes having the elastomeric member positioned through the plurality of holes. As such, claims 48-53 are not anticipated, nor obvious, over the cited art or combination of art.

It is submitted that pending claims 28 through 46 and 48 through 53 are allowable. It is respectfully urged that this application be passed to allowance.

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